

CHRISTINE TYSON
Claimant

RUSSELL STOVER CANDIES
Respondent

HARTFORD ACCIDENT AND INDEMNITY
Insurance Carrier

[illegible]

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant testified she worked in the sanitation department of respondent's business cleaning the candy pots in the kitchen and cleaning up after belts were sterilized. Claimant was issued and required to wear boots at certain times when cleaning, which claimant described as men's rubber boots coming up to her knees.

On the day of the accident, September 24, 1998, claimant was walking down the stairs next to the kitchen where she was going to begin cleaning pots when she twisted her right ankle causing it to buckle. Claimant experienced immediate pain but continued work. She did, however, visit the company nurse that same evening complaining of ankle pain. The nurse administered Tylenol to claimant and asked claimant if she wished to fill out a report. Claimant declined to fill out the report stating that she was still on her 90 day probationary period with respondent.

Claimant continued working for respondent that next week until October 1, 1998, when claimant experienced considerable pain in her ankle immediately before her regular shift began. Claimant had already been working that morning of October 1, on overtime, unwrapping candy, and she testified she was in pain while performing that job as well. That same day, claimant was taken by respondent to the emergency room of Allen County Hospital where x-rays were taken and an air cast provided.

Claimant was later seen by respondent's company doctor, Dr. Brian D. Wolfe, whose medical report admitted into evidence shows claimant attributed her ankle pain to the September 24, 1998, incident where her ankle twisted and buckled. Dr. Wolfe diagnosed an ankle sprain and stated he thought it was a work-related injury. Claimant testified that Dr. Wolfe gave her pain pills and authorized four weeks of physical therapy.

Claimant was also seen by Dr. Edward J. Prostic whose medical report indicated that he thought claimant's injury was very likely an osteochondral fracture of the talus, which would not be visualized on plain x-rays. Dr. Prostic's report indicated that her injury was the result of the September 24, 1998, incident at work. He further opined that claimant needed an MRI of her right ankle to further delineate the injury and to serve as a guide for future treatment.

Claimant's employment was terminated by respondent at the end of her 90-day probationary period, that was on or around October 7, 1998. From the date of the accident until her termination, claimant reported her right ankle remained symptomatic and it tended to buckle if she stood too long or put too much weight on it. Claimant also testified that the boots respondent required claimant to wear when she cleaned were too big for claimant and thus caused increased pain to her right ankle when part of the right boot would hit her foot.

On appeal, respondent argues that claimant did not suffer an injury at work arising out of and in the course of her employment. In support, respondent points to the testimony and statements of three employees of respondent. Their statements of the events surrounding claimant's injury conflict with claimant's version of events. Due to this conflicting testimony, the credibility of the witnesses becomes an important consideration. The Administrative Law Judge, in this case, had the opportunity to see claimant testify and judge her demeanor and credibility. The Administrative Law Judge stated he found claimant to be a credible witness, finding that claimant suffered injury by accident on the

date alleged which arose out of and in the course of claimant's employment. He ordered respondent and its insurance carrier to pay for claimant's medical treatment with Dr. Prostic. The Administrative Law Judge also noted, as does the Appeals Board, that the statements of respondent's three witnesses were inconsistent and conflicting among themselves. Accordingly, the Appeals Board takes into consideration the Administrative Law Judge's findings with regard to the credibility of the claimant as a witness and will give some deference to his conclusions in that regard. Therefore, based upon the record compiled to date, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the August 6, 1999, preliminary hearing Order by Administrative Law Judge Bryce D. Benedict should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Brenden W. Webb, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director